

Office of the Yavapai County Attorney
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YAVAPAI COUNTY ATTORNEY'S OFFICE
JOSEPH C. BUTNER SBN 005229
DEPUTY COUNTY ATTORNEY
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Attorneys for STATE OF ARIZONA

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF YAVAPAI

STATE OF ARIZONA,

Plaintiff,

vs.

STEVEN CARROLL DeMOCKER,

Defendant.

Cause No. P1300CR0020081339

Division 6

STATE'S AFFIDAVIT RE: RULE
10.1 MOTION FOR CHANGE OF
JUDGE FOR CAUSE

STATE OF ARIZONA)
) ss
County of Yavapai)

JOSEPH C. BUTNER, being first duly sworn upon his oath, deposes and says:

1. Your AFFIANT is the Yavapai County Deputy Attorney assigned to prosecute the above-noted matter.

2. That Defendant, STEVEN CARROLL DEMOCKER, was indicted on February 6, 2009 with one (1) count First Degree Murder, a class 1 felony, and one (1) count First Degree Burglary, a class 2 felony, in P1300CR20081339. This is a capital case.

9:12 **FILED** ~~stbck~~ A m
APR - 2 2010
JEANNE HICKS Clerk
BY **T. ROENE**
Deputy

1 3. On March 2, 2010 following oral argument on the constitutionality of the death penalty
2 Judge Thomas Lindberg questioned your AFFIANT whether the State is continuing to evaluate
3 the allegation of the death penalty in this case. This inquiry came after the Judge appeared to be
4 persuaded by the Defendant's arguments on the applicability of the death penalty in this case and
5 after the judge in a prior hearing found that probable cause existed to support three (3) death
6 penalty aggravating factors.
7

8 4. On March 30, 2010, at approximately 3:00 p.m., your AFFIANT, Deputy County
9 Attorney Jeff Paupore, and defense counsels, John Sears, Larry Hammond, and Anne Chapman,
10 and HON. THOMAS B. LINDBERG were in chambers, off the record, discussing the
11 admissibility of *Ariz. R. Evid.*, Rule 404(b) evidence in the State's case-in-chief.
12

13 4. When the topic of discussion turned to evidence in the penalty phase, HON. THOMAS
14 B. LINDBERG stated "I don't believe we're going to get there."
15

16 5. AFFIANT believes the comment made by HON. THOMAS B. LINDBERG displays
17 unfair bias and prejudice in regard to the State's case which demonstrates undue or deep-seated
18 favoritism toward the Defendant or undue or deep-seated antagonism towards the Yavapai
19 County Sheriff's Office and the State.
20

21 6. AFFIANT believes the unsolicited comments raises a serious issue about the HON.
22 THOMAS B. LINDBERG'S independent judgment and impartiality in this case.
23

24 7. AFFIANT believes the State will not be able to have a fair and impartial jury trial
25 before a judge who is biased to rule in favor of the Defendant or against the State.
26

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1 8. AFFIANT verified the comment was heard by himself, fellow prosecutor Jeff Paupore,
2 and defense counsel Anne Chapman.

3 RESPECTFULLY SUBMITTED this 24 day of April, 2010.

4
5 SHEILA SULLIVAN POLK
YAVAPAI COUNTY ATTORNEY

6
7 By: [Signature]
8 Joseph C. Butner
Deputy County Attorney

9 SUBSCRIBED and SWORN to before me this 2nd day of April, 2010, by Joseph C.
10 Butner.

11 [Signature]
12 Notary Public

13 My Commission Expires:

14 Oct 18, 2011

